

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Public Safety and Homeland Security Bureau) RM-11780
Seeks Comment on Request of the National)
Association of State 911 Administrators to)
Address Issues Related to 911 Applications)
for Smartphones)

COMMENTS OF ACT | THE APP ASSOCIATION

ACT | The App Association (The App Association) respectfully submits its views in response to the Federal Communications Commission's (Commission's or FCC's) Public Notice (PN) in the above-captioned proceeding.¹ Below, the App Association discusses the innovative and quickly-evolving app ecosystem and its benefits to emergency communications, as well as its concerns with proposals that would have the Commission intervene into such a system without adequate statutory authority while the Federal Trade Commission (FTC) is the appropriate venue to address the concerns raised by the National Association of State 911 Administrators (NASNA).²

ACT | The App Association represents more than 5,000 small- and medium-sized app development companies and technology firms across the world. As the world has quickly embraced mobile technology, the hyper-competitive app ecosystem continues to produce more innovative and more efficient solutions that leverage mobile technologies to drive the global digital economy across modalities and segments, augmenting consumer interactions and experiences throughout their personal and work lives.

¹ *Public Safety and Homeland Security Bureau Seeks Comment on Request of the National Association of State 911 Administrators to Address Issues Related to 911 Applications for Smartphones*, Public Notice, DA 16-1405 (rel. Dec. 19, 2016).

² Letter from Evelyn Bailey, Executive Director, National Association of State 911 Administrators, to Tom Wheeler, Chairman, FCC (October 18, 2016).

The app industry has been in existence less than a decade, driving the rapid growth of smartphones and an ever-increasing number of internet-enabled devices. As we detail in our annually-released *State of the App Economy* report,³ the app economy is a \$120 billion ecosystem today that is led by U.S. companies, the vast majority of which are startups or small businesses. While the internet of things (IoT) touches more and more areas of Americans' personal and work lives, the interface for communicating with these devices is likely to remain a mobile app. In short, apps are the interface for the IoT revolution.

I. Mobile App Innovations Are Increasingly Enabling More Effective and Efficient Emergency Communications to Consumers in a Cost-Effective Manner, and the Commission's Actions in This Proceeding Will Potentially Stunt Its Extraordinary Growth

Emergency communications are no exception to the app revolution, and the Commission should ensure that its policies enhance, rather than disrupt, the benefits that this innovative ecosystem can bring to 911 communications. The hyper-competitive app economy's market effects demand that companies offering app-based services provide reliable apps in the public safety context, and the App Association is committed to working with all stakeholders to ensure reliable apps that provide 911 connectivity for Americans.

For example, RapidSOS, a Boston-based app company in the 911 space, provides a platform that enables consumers to connect immediately with emergency services utilizing its "one touch" application.⁴ By 2015, with just 20 engineers and only two years into the company's existence, RapidSOS deployed 44 dispatch centers in north central Texas as a case study of its 911 platform, and had 25 companies and universities beta-test its platform.⁵ Moreover, RapidSOS provides this vital service at no charge to the ordinary consumer.⁶

³ ACT | The App Association, *State of the App Economy 2016* (Jan. 2016), *available at* <http://actonline.org/state-of-the-app-economy-2016/>.

⁴ TechCrunch, *When Seconds Count, RapidSOS Will Be Ready When 911 Isn't*, Published June, 3, 2015, found here: <https://techcrunch.com/2015/06/03/rapidsos/>.

⁵ *See id.*

⁶ *See id.*

Additionally, UnaliWear, a member of the App Association, provides discreet support for falls, medication reminders, and a guard against wandering by pairing its software into its classically-styled watch that features an easy-to-use speech interface rather than buttons. Unlike traditional medical alert products, it works wherever the consumer is, day or night. Additionally, unlike Apple Watch or Samsung Gear, it does not require a smart phone.⁷

As far back as the Commission's public event on this topic in 2015,⁸ a number of compelling presentations and exhibits demonstrated the power of mobile apps in the 911 context, reflecting the ability of the app economy to respond to market trends and end user needs. Technology innovations such as WebRTC, which several innovators at the 2015 event utilized, dramatically enable 911 capabilities at lowered cost.⁹ Since 2015, the app economy has continued to grow and build on innovations such as WebRTC, which has incorporated its framework into the software development kits (SDKs) that developers use to bring their innovations to app stores on all major platforms.

If it is to continue benefiting countless Americans, the app economy's ingenuity should not be stifled by regulatory overreach. From this public policy perspective, we strongly urge the Commission to refrain from any further formal action in this proceeding. The App Association is committed to working with all stakeholders, including the Commission, on ways to ensure the reliability of apps that facilitate 911 communications.

II. The Commission's Legal Authority Over the 911 App Space is Unclear, While the FTC Has Well-Established Authority to Address App Claims and Services Impacting Consumers

In its PN, the Commission completely omits discussion of where it would derive authority over apps enabling 911 communications, or apps generally. As the Commission is aware, it typically does not engage in matters involving the business practices of "edge providers." The App Association does not believe that this proceeding is appropriate because it falls outside of the regulatory scope granted to the Commission by either the Communications Act or the Telecommunications Act. If the Commission proceeds with this matter, it should first engage in a thorough analysis addressing its legal authority over this issue. Until such an analysis is presented for public review and comment, we cannot speculate on what such authority would be.

⁷ See <http://www.unaliwear.com>.

⁸ *911 Apps Workshop*, FCC. (May 8, 2015) Found here: <https://www.fcc.gov/news-events/events/2015/05/911-apps-workshop>.

⁹ *911 Workshop*, FCC. Found here: <https://www.fcc.gov/news-events/events/2015/05/911-apps-workshop>

The Commission's action here is especially peculiar when one considers that the Commission has explicitly said in separate proceedings that it will not touch edge services.¹⁰ Moving forward, the Commission should honor its commitment to this approach and stay within the parameters of its regulatory purview. We further request that, should any further formal steps be taken in this matter, the Commission carefully examine whether it has *any* jurisdictional discretion at all by carrying out the analytical framework established in *Chevron v. NRDC*.¹¹ Respectfully, we strongly encourage the Commission to observe and respect the traditional tenets and restrictions of administrative law.

The App Association understands and appreciates NASNA's concerns expressed in their letter. We are committed to ensuring that apps providing 911 communications are reliable. Fortunately for NASNA, a proper forum to resolve its concerns expressed to the FCC already exists elsewhere. The FTC—not the FCC—is the proper venue to address apps and related alleged consumer harms generally, as well as for the specific complaints outlined in NASNA's letter to the outgoing Chairman.¹² Under Section 5(a) of the FTC Act, the FTC has the authority to protect consumers against “unfair or deceptive acts or practices.”¹³ The FTC also has the proven experience and requisite expertise to handle issues like the ones addressed in the Commission's PN and the letter to which it is responding.

¹⁰ *In the Matter of Protecting and Promoting the Internet*, 30 FCC Rcd. 5601, GN Docket No. 14-28, Report and Order, at Para. 382 (2015) (writing “[the Commission is] not, however, regulating the Internet, *per se*, or *any Internet applications or content*. Rather, our reclassification of broadband Internet access service involves only the transmission component of Internet access service.” (Emphasis Added)); *see also In the Matter of Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor ‘Do Not Track’ Requests*, DA-15-1266, RM-11757, Order, at Para 1 (2015) (writing “[t]he Commission has been unequivocal in declaring that it has no intent to regulate edge providers.”).

¹¹ 467 U.S. 837, 42-43 (1984) (holding that courts should give deference to administrative agencies so long as the particular agency: “[f]irst, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute...Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.”).

¹² Letter from Evelyn Bailey, Executive Director, National Association of State 911 Administrators, to Tom Wheeler, Chairman, FCC, RM-11780 (October 18, 2016) (NASNA Letter).

¹³ 15 U.S.C. § 45(a)(1)-(2).

In conclusion, the App Association urges the Commission to recognize that (1) Commission action on NASNA's complaints requires a thorough analysis and justification of its authority to do so before proceeding; and (2) that the FTC (and not the FCC) is the proper venue to resolve NASNA's issues.

III. The Issue of FCC Authority Aside, any Agency Action Regarding 911 Apps Should Be Predicated on an Established Data-Driven Evidence Base

Generally, the App Association urges the Commission to understand and appreciate the vital role of competition in the dynamic marketplace residing on the network edge, the limits of Commission authority across areas of responsibility, and the need for establishing a data-driven evidence base in advance of setting *ex ante* policies. NASNA's letter to the Commission fails to provide such evidence and contains only anecdotes. Action on such a basis would cause damage to innovation in the app ecosystem. Should the Commission proceed in this matter, despite an apparent lack of authority, the App Association strongly urges that action be based on a clear and demonstrated evidence basis.

Respectfully submitted,



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